



Vol. 11 No. 2

TENNESSEE

REAL ESTATE APPRAISER REPORT

REAL ESTATE APPRAISER COMMISSION

TENNESSEE DEPARTMENT OF COMMERCE & INSURANCE

Chairman's Report

By Robert Sain

This past year brought many challenges to the commission, and I would like to congratulate Gary Standifer for a job well done. His professionalism and leadership guided the commission through another successful year.

Serving on the Appraisal Commission over the past five years has been very rewarding. One of my main goals, along with other commissioners and staff, was to make the commission more "user friendly", to help give guidance to new applicants, and to be accessible to work and assist our fellow appraisers across the state. While our job is to enforce the rules and regulations and to protect the citizens of this state, as an appraiser, you should feel comfortable coming before the commission and voicing your opinion on important issues which affect our profession. Sandy Moore and staff have done an excellent job in meeting the needs of appraisers as well as commission members. Their job is difficult, and we are fortunate to have an experienced administrative director and present staff to

handle the workload. I would also like to welcome Connaught O'Connor as our new staff attorney, and thank Christy Allen, who has served as our staff attorney in the past. Legal has had the devious duty of keeping the commission on track, as well as handling complaints and advising us on issues concerning rules and regulations.

We have some challenging issues which will be dealt with over the next twelve months. I am asking that you provide us with your opinions on certain issues that will affect our industry and businesses. Take time to attend a commission meeting, or pick up the phone and express your opinion to one of the commissioners in your area. We had previously planned on holding public forums in east and west Tennessee which would make it more convenient for appraisers to attend a meeting; but due to budget constraints, these forums will have to be delayed.

Our state has always been looked upon as a leader in this profession. We have been fortunate to have a variety of outstanding members, both in the appraisal field, and as public members. Serving their last meeting in June, were Don Turner and Paul Sampson. Both of these men served the commission for six years, one year as chairman. I would like to express my sincere appreciation for their dedication, hard work, and many hours of service. It was an honor to serve three years with these gentlemen,

and their knowledge and experience will be greatly missed by the commission. In return, I would like to welcome our new members, Mr. Luther Bratton and Mr. Sam Pipkin. I look forward to working with both of these men and feel certain they will continue the efforts and goals of past members, as well as bring new ideas to the commission.

In closing, let me again thank you for the honor of serving as your Chairman. I will continue to keep you informed of important issues before the commission, and again, invite you to attend and voice your opinions.

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USPAP Q&A
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Gramm-Leach-Bliley Act

Trainee Renewals



There is now a late fee for trainees who do not submit their renewals within thirty (30) days of their expiration date. The late fee is \$100. No late renewals can be granted after six months.

Q & A USPAP

Question :

I am working on an assignment with another appraiser. When finished, we will both sign the report and the certification. Does this mean that we must create two workfiles so that we can both comply with the record keeping rules?

Response:

No. The Record Keeping section of the ETHICS RULE requires that a workfile be prepared for each assignment. One workfile is sufficient, even if two appraisers are involved in an assignment. The Record Keeping section also requires that:

An appraiser must retain the workfile for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last, and have custody of his or her workfile, or make appropriate workfile retention, access, and retrieval arrangements with the party having custody of the workfile.

Therefore, arrangements should be made for one appraiser to retain the file, with access provided to the other appraiser.

Question :

I've been asked by a bank to provide a replacement cost estimate for an improved property to assist them in establishing an appropriate level of fire insurance for their loan. This assignment does not involve appraising this property, so I don't consider it to be an appraisal assignment. Is it a consulting assignment under USPAP?

Response:

No, the assignment you describe does not constitute an appraisal under Standards 1 & 2 of USPAP, since it does not involve developing an opinion of value. Likewise, it is not an appraisal consulting assignment under Standards 4 & 5. An appraisal consulting assignment, as defined in USPAP, requires that an appraisal be a component of the analysis leading to the assignment results. As such, this type of assignment has no specific name and no specific performance standards that apply to it.

Question:

Why is it unethical for an appraiser to accept compensation for an assignment that is contingent on pre-determined results?

Response:

The objective of the appraisal development process is a credible opinion. This objective requires that the development process be independent, objective, and impartial so that the resulting opinions are credible in the context of their intended use. Since the primary objective of these Standards is to promote and maintain a high level of public trust in professional appraisal practice, it is appropriate that those practices, which are inherently contradictory to this objective, be prohibited. Such practices include accepting compensation for assignments that are based on a predetermined or subsequent outcome that affect the appraisers independence, objectivity, or impartiality. For these reasons, the Management Section of the ETHICS RULE states:

It is unethical for an appraiser to accept compensation for performing an assignment when the assignment results are contingent upon:

1. *the reporting of a predetermined result (e.g., opinion of value);*
2. *a direction in assignment results that favors the cause of the client;*
3. *the amount of a value opinion;*
4. *the attainment of a stipulated result; or*

5. *the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.*

Question:

I understand that the ASB retired Statement No. 8, "Electronic Transmission of Reports" effective January 1, 2002. Does this mean I can no longer send appraisal reports electronically to my clients after that date?

Response:

No, you can continue to send your reports electronically. The ASB recently voted to retire Statement No. 8 because some of its requirements were out of date. There have been many changes since this Statement was originally adopted in 1995. Appraisers should still exercise the same level of care in transmitting their appraisal reports whether they are communicated orally, in a written report, or electronically. In particular, for all written reports the certification must be signed. A "signature" is defined in USPAP as: **SIGNATURE:** *personalized evidence indicating authentication of the work performed by the appraiser and the acceptance of the responsibility for content, analyses, and the conclusions in the report.* Comment: A signature can be represented by a handwritten mark, a digitized image controlled by a personalized identification number, or other media, where the appraiser has sole personalized control of affixing the signature.

Question:

What does it mean when the ASB retires a portion of USPAP?

Response:

To "retire" a portion of

USPAP means to withdraw it so it is no longer of force. The ASB is responsible for promulgating, developing, publishing, interpreting, and amending the Uniform Standards of Professional Appraisal Practice. As such, it can decide to retire any portion of the USPAP if it is incorrect, no longer necessary or applicable, or otherwise deficient. However, in the public's eye, the acronym "USPAP" has come to refer to an annual publication of the Appraisal Foundation, which includes more than the Uniform Standards of Professional Appraisal Practice. For example, the Advisory Opinions and Glossary are not actually parts of the Uniform Standards of Professional Appraisal Practice, even though they are bound within the same publication. Since not all of the portions of USPAP constitute appraisal standards or have the weight of an appraisal standard, not all parts of the document are subject to the same process of retirement. Retirement of those portions of USPAP that constitute appraisal standards must be exposed for a minimum of 30 days prior to any action by the ASB. This includes the DEFINITIONS, PREAMBLE, RULES, STANDARDS RULES, and STATEMENTS ON APPRAISAL STANDARDS. The Advisory Opinions and the Glossary can be adopted, removed, or modified by the ASB without prior notice.

Question:

I understand the ASB recently made changes to USPAP that are effective as of July 1, 2001. Is that true? And, what were those changes?

Response:

Yes, that is true. Due to recent federal regulatory activity, most notably the Federal Trade Commission's Final Rule on Privacy of Consumer Financial Information, 16 CFR Part 313, that takes effect on July 1, 2001, the ASB voted to make certain sections of the newly adopted material

effective simultaneously on July 1, 2001. The following changes to USPAP adopted by the ASB were effective July 1, 2001:

1. The Confidentiality section of the ETHICS RULE was edited to illustrate that, *"an appraiser must be aware of, and comply with, all confidentiality and privacy laws and regulations applicable in an assignment."* Additionally, text was added to indicate that disclosure of confidential information is permissible to professional peer review committees, *"except when such disclosure to a committee would violate applicable law or regulation."* A notice regarding the adoption of federal privacy regulations was also added to this section.

2. The DEFINITION of "Confidential Information" was changed to read: *CONFIDENTIAL INFORMATION: information that is either:*

identified by the client as confidential when providing it to an appraiser and that is not available from any other source; or

classified as confidential or private by applicable law or regulation.

A notice regarding the adoption of federal privacy regulations was also added to this definition.

3. STATEMENT NO. 5 (SMT-5), *The Confidentiality Section of the Ethics Rule*, was retired.

One of the main reasons we ask the applicant to come in for the interview is to determine if the applicant understands the method and techniques that were used in developing the report. We do not require a certain technique be used by the applicant, but it is our duty to make sure the applicant understands the techniques used. This also gives me the opportunity to thank our educators who have attended the commission meetings. We will continue to involve you, and appreciate your efforts in training appraisers across the state.

S.R. 1-1(b) states that the appraiser must not commit a substantial error commission or commission that significantly affects an appraisal.

When the reports are submitted, they are assigned to commission members who have a chance to review the reports for substantial errors, which may significantly affect the appraisal report. For example, we look for gross miscalculations of square footage, adjustments which appear to be out of line, or we may have questions concerning why sales outside the subject neighborhood were used. Sale dates, size of sales, or other typical review concerns. Critical words in this standards rule are *substantial* and *significantly*. In determining if an error is substantial or if the appraisal was significantly affected, we must rely on the *reasonable appraiser* test: Would most reasonable appraisers have acted in the same or similar manner, and would they have arrived at similar results?

Standards Rule 1-1-9 (c) states that the appraisers must *not render appraisal services in a careless or negligent manner, such as a series of errors that, considered individually, may not significantly affect the results of an appraisal, but which when considered in the aggregate, would*

Reviewing applicants What we look for and why?

By Robert Sain

Standards Rule 1-1 states that the appraiser must be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

be misleading.

While one major error in the appraisal process may affect the results, a series of small errors may also skew the results. We realize and agree with the standards rule note that "perfection is impossible to attain" and "competence does not require perfection." However, with the applicant present, we have a feel if the appraiser used due diligence and, again, the reasonable appraiser test applies. "This is the way my sponsor told me to do it," insufficient time to complete an assignment, or an inadequate fee are never valid excuses for negligence or sloppiness.

We have approximately thirty minutes during the interview process to get a feel of the level of competence of the applicant. Our goal is *not* to harass or embarrass the applicant during the interview. After the interview, or sometimes during, we might make suggestions of courses, which appear to be needed, depending upon the deficiencies found during the process. In many cases, the work of the applicant reflects the work of the sponsor. Education can only give the foundation; experience is the real teacher of our profession. The commission urges sponsors of the importance of keeping abreast of changes in the appraisal industry, and in the way appraisal services are performed. It is not enough for any appraiser to simply maintain their skills; we must continually strive to improve them.

In closing, the commission urges trainees with 500 hours of experience to come in for the interview process. This is an option which the commission adopted in order to make sure the applicant is headed in the right direction, and discuss any deficiencies which he or she might be having at that time. It is possible that the trainee may not have to come back for another interview once he or she has complied with other requirements necessary for licensing.

E ducation

Commission Accepts Distance Education

The Commission has recently adopted a policy whereby licensees can obtain up to seven (7) hours of the required twenty-eight (28) hours of education via distance (Internet) education. At this time, the seminars must have been pre-approved by the Appraiser Qualifications Board (AQB). The Commission will begin reviewing distance education seminars from course providers. Sufficient information must be submitted to insure that the seminar provides adequate delivery and security system.

AQB Enacts Changes

The Appraiser Qualifications Board (AQB) has recently made changes in the requirements involving USPAP. These changes are effective January 1, 2003. This Commission must adopt rules which would effect these changes.

1. USPAP courses taken for qualifying and continuing education must be the *national USPAP Courses* or their equivalent.
2. In order for an appraiser to receive state credit for attending a USPAP course, it must have been taught by an AQB Certified USPAP Instructor who is also a state certified residential or general appraiser. AQB Certified USPAP Instructors must meet minimum requirements as outlined by the AQB.

Continuing education requirements for real property appraisers have been modified to require 7 hours of USPAP instruction every two years. The overall continuing education requirement of 14 hours

per year remains unchanged. Prior to these changes, additional information will be relayed to licensees.

Five-Year USPAP Requirement

The USPAP course is required every five years from the date of initial licensure or if licensed over five years, five years since the date that the course was last taken. Unlike other courses which cannot be taken more than once in a five year period, USPAP can be taken once every renewal period to count towards Continuing Education and to upgrade your five year requirement.

For example, if a licensee was first licensed on **January 1, 1998**, the course should be taken prior to **January 1, 2003**. However, if you were first licensed in **January 1, 1998** and you took USPAP for continuing education **April 1, 1998** then the course should be taken prior to **April 1, 2003** to meet the five year requirement.

Individual Course Approval

Oftentimes, licensees wish to take a course or seminar which has not been pre-approved by the Commission. Licensees may submit a request for approval on an individual basis and receive approval for continuing education.

The application for approval may be sent prior to or subsequent to attending the class. Usually, a detailed summary of the course, table of contents, or handout is sufficient information as to the content of the course. Other information regarding the instructor, location, number of hours, etc., is requested on the form.

For your convenience, we have placed a copy of the

individual course approval form in this newsletter that you may copy and use in the future should there be a need.



New Commission Members

Governor Sundquist has appointed two new members to the Commission. They are Sam Pipkin, Knoxville, and Luther Bratton, Portland. Welcome to the Commission, Mr. Pipkin and Mr. Bratton!

Lewis S. Pipkin, established the Lewis Pipkin company in 1968 after working for the University of Tennessee and State of Tennessee, Department of Transportation. His education includes a Bachelor of Science in Agriculture and a Master of Science from the University of Tennessee. In addition, Mr. Pipkin has taught appraisal courses for the University of Tennessee, Roane State Community College, The Society of Real Estate Appraisers, and the American Institute of Real Estate Appraisers. He has qualified to testify as an expert witness in various circuit and federal courts in Tennessee, and superior courts in North Carolina. Mr. Pipkin is a State Certified General Real Estate Appraiser and holds the MAI and SRA designations from the Appraisal Institute. Mr. Pipkin is married to Jane Pollard Pipkin and they reside in Knoxville, Tennessee.

Lou Bratton is the owner and manager of Bratton & Associates, a full-time real estate appraisal firm. Bratton & Associates has been in business since 1987. Mr. Bratton graduated from Tennessee State University in 1980 with a B.S. Degree in Criminal Justice. Mr. Bratton has three children; Nikita, Teresa, and Alfonso.

GRAMM-LEACH-BLILEY ACT EFFECT ON APPRAISERS

The Federal Trade Commission has published its final privacy regulations (the Final Rule) as required by the Gramm-Leach-Bliley (GLB) Act. The Final Rule specifically includes real estate appraisers under the definition of a financial institution. Because GLB focuses on personal information and not on information related to business activities, the Final Rule's regulations should only impact those appraisers performing residential appraisals. The following is taken from: 1) a white paper prepared by the Appraisal Foundation titled "Privacy Regulation and the Appraiser," dated June 2001; and 2) a Memorandum prepared by the Appraisal Institute, Don Kelly, Vice President, Public Affairs regarding Summary of Gramm-Leach-Bliley Act Privacy Requirement & Sample Formats, dated July 6, 2001.

GLB was signed into law on November 12, 1999. The intent of GLB is to protect consumers' personal information obtained by a financial institution from being disclosed or released without notice and without permission of the consumer. Compliance with the new law is mandatory as of July 1, 2001. Federal regulations identify "appraising real or personal property" as activities closely related to banking and as such are covered by the Act.

An appraiser who receives non-public personal financial information from a financial institution or directly from a consumer who is a client in the course of performing an assignment will be held responsible for compliance with GLB and its implementing regulations. Since the privacy notice-requirements are fact-specific, appraisers may wish to review the regulations or check with their own counsel to determine the regulations' application to their specific circumstances.

GLB focuses on "non public personal information." The FTC Privacy Rule develops the term "personally identifiable financial information" to include (numbers added): 1) information that a consumer provides to a financial institution in order to obtain a financial service; 2) information resulting from any transaction between the consumer and the financial institution involving a financial product or service; and 3) financial information about a consumer a financial institution otherwise obtains in connection with providing a financial service to the customer.

The applicable sections of the Uniform Standards of Professional Appraisal Practice (USPAP) will be updated so they will not conflict with the new federal privacy requirements. The definition of confidentiality in the 2001 version of USPAP will be revised in 2002 USPAP to reflect the requirements for compliance with GLB.

Appraisers will still be held accountable for compliance with the FTC and other federal regulations as they apply to each situation and to information received from clients in the course of performing appraisal assignments. The appraiser must proactively inquire as to the status of the information provided by their lender clients with respect to its privacy status pursuant to the FTC Privacy Rule, and provide the appropriate notices to clients for whom they directly provide appraisals.

Where an appraiser performs an assignment for a lender or financial institution (and not an individual), the appraiser will not be subject to the Final Rule's privacy notice requirements because the appraiser will not have a "consumer" or "customer" as defined by GLB. The appraiser will not have to provide any notice

requirements. The privacy regulations permit the appraiser to disclose information that is "necessary to effect a transaction."

Even when an appraiser is not required to provide notice under the Final Rule, he or she should have a simple privacy notice available for clients who may request it. The notice should explain how the appraiser treats nonpublic personal information and should include a confidential policy. However, when the lender is the appraiser's client, the lender will be required to provide an appropriate Privacy Notice with an opt-out provision to the consumer; the lender should inform the appraiser as to any privacy related restrictions on information provided to the appraiser relative to the FTC Privacy Rule and the GLB and specify any information for which the consumer has not yet indicated his or her opt-out decision. In complying with the re-use and disclosure provisions of the FTC Privacy Rule, the appraiser should take steps necessary to ensure that information received from a lender client has been obtained in conformance with the Final Rule and ascertain the status of such information as public, non-public/private and if and under what conditions opt-out provision apply, including specific re-use restrictions. When a consumer directly contracts with the appraiser, the appraiser is responsible for providing a Privacy Notice with an opt-out provision. The notice should clearly specify what re-use of the nonpublic personal information is contemplated.

A key provision of the FTC Privacy Rule is the requirement to provide the consumer with a "conspicuous" and clear privacy notice that reflects the financial institution's privacy policies and information sharing practices as well as the "categories of information" collected and disclosed. Another key provision is that the Privacy Notice disclose the consumer's right

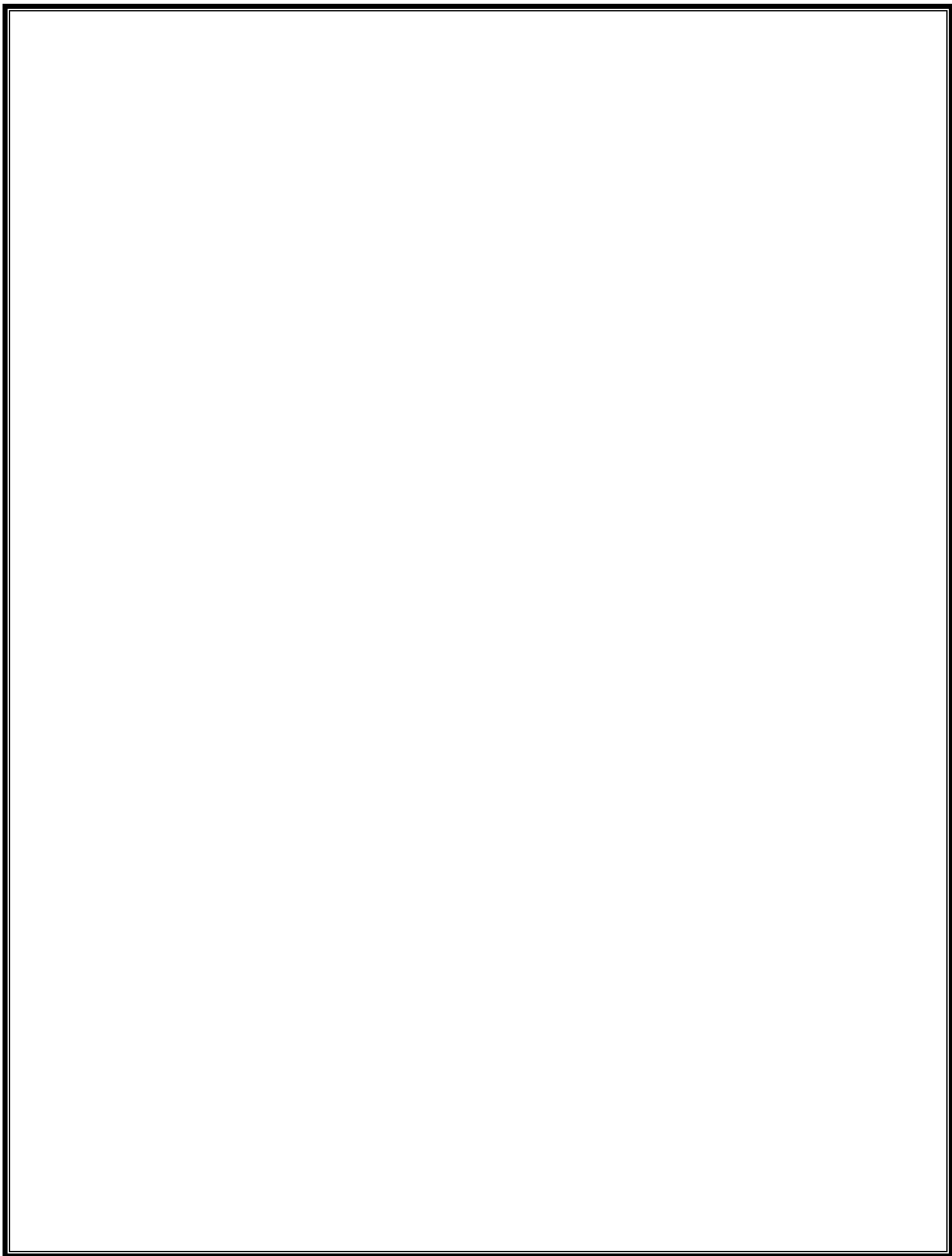
to "opt-out" of any future sharing of their non-public personal financial information, and that such opt-out notice be "clear and conspicuous and accurately explain the right to opt out." The FTC Privacy Rules indicate there can be re-use of information provided that: (1) the non-public personal information is obtained pursuant to a properly disclosed Privacy Notice that includes an opt-out provision; and (2) the consumer has not exercised his or her opt-out rights. In these situations, the re-use of the information would be limited to specific use disclosed in the Privacy Notice.

While the above are general requirements related to the GLB, there are specific requirements that must be met when an appraiser deals directly with a consumer. A consumer is an individual who obtains an appraisal for personal, family or household purposes. A consumer is a person with no continuing relationship with the appraiser and who obtains his or her appraisal in an isolated, one time transaction. Where a real estate appraiser deals directly with a consumer, the appraiser will be subject to certain notice requirements collected about the consumer. In this circumstance, the appraiser must first provide the consumer the following: 1) an Initial Privacy Notice which is a clear and conspicuous notice reflecting the real estate appraiser's privacy policies and practices or a Short Form Privacy Notice which states that the appraiser's Privacy Notice is available upon request and explains a reasonable means to obtain the Notice; and 2) an Opt-Out Notice which is a clear and conspicuous notice explaining that the appraiser may disclose the consumer's non-public personal information. The notice should also state that the

consumer may opt-out of such disclosure and provide a reasonable means for the consumer to opt-out.

Where an appraiser has a continuing relationship with the consumer, the consumer becomes a "customer" under the Final Rule. The Final Rule permits the appraiser to disclose information that is "necessary to effect a transaction." If the appraiser is going to disclose to third parties any information collected about the customer outside of this exception, the appraiser must first provide the following: 1) an Initial Privacy Notice (same as above) must be provide at the commencement of the customer relationship; 2) an Opt-Out Notice (same as above) must be provide with the Initial Privacy Notice; and 3) an Annual Privacy Notice must be provide on a yearly basis.

Lastly, implementation of the FTC Rule and GLB by federal agencies and federal financial institutions will continue to offer challenges and complications for appraisers and other financial service providers. The appraiser should ask his or her lender clients as to what information provided in the context of an appraisal assignment is protected by the FTC Privacy Rule and GLB and of that information, what has been released or waived pursuant to the provisions of the Rule and Act. When an appraiser contracts directly with a consumer, the appraiser should take steps to ensure that the consumer's non-public personal information is protected and that the consumer is provided with the necessary notices and disclosures.



Tennessee Real Estate Appraiser Commission

500 James Robertson Parkway

Suite 620

Nashville, TN 37243-1166

Tennessee Department of Commerce and Insurance
Tennessee Real Estate Appraiser Report is published by the Tennessee Real Estate Appraiser Commission

Members of the Commission:

Robert Sain, Chairman
Bolivar

Gary Standifer, Vice Chairman
Brentwood

William Blackburn, Appraiser Member
Morristown

Polly A. Dyer, Appraiser Member
Bon Aqua

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Sevierville



STAFF MEMBERS

Sandra S. Moore
Administrative
Director

Chelsey Luke
Administrative
Assistant RB1

Darlene Hendrix
Administrative
Assistant RB1

Joyce Branham
Licensing Technician

Commission Meeting
Dates for
2001

October 15
November 12

Room 640
Room 640

Unless otherwise noted, the Commission meetings are scheduled to be held at 500 James Robertson Parkway, Nashville, Tennessee. Meetings start at 9:00 am. The public is invited to attend. Please call the Commission office to verify that the meeting will be held on the date scheduled.

"The Tennessee Department of Commerce and Insurance is committed to principles of equal opportunity, equal access, and affirmative action." Contact the EEO Coordinator or ADA Coordinator (615)741-0481, for TDD (615)741-7190.

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